MT LEGISLATIVE HISTORY

Chapter 513 1979

Bill H _____ (S) 88 Original bill & hist. X C

H. Committee on Judiciary

Hearing Date(s) Jan 30 ✓ C
Mar 05 ✓ C
Mar 08 ✓ C
Mar 16 ✓ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) Jan 16 ✓ C
_____ C
_____ C
_____ C

Jan 16 ✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

CHAPTER NO. 513

SENATE BILL NO. 88

INTRODUCED BY TURNAGE, TOWE

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

IN THE SENATE

January 11, 1979	Introduced and referred to Committee on Judiciary.
January 16, 1979	Committee recommend bill do pass as amended. Report adopted.
January 18, 1979	Printed and placed on Members desks.
January 19, 1979	Motion pass consideration.
January 20, 1979	Second reading, pass consideration.
January 22, 1979	Second reading, do pass as amended.
January 23, 1979	Correctly engrossed.
January 24, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

January 25, 1979	Introduced and referred to Committee on Judiciary.
March 19, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 20, 1979	Second reading, concurred in.
March 23, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 24, 1979	Returned from second house. Concurred in as amended.

March 26, 1979	Second reading, pass consideration until 3-28-79.
March 28, 1979	Second reading, amendments adopted.
March 29, 1979	Third reading, amendments adopted. Sent to enrolling.
	Reported correctly enrolled.

Senate BILL NO. 88

INTRODUCED BY Tipworth Towe

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE CREATION AND ADMINISTRATION OF TRUSTS IN FAVOR OF ABSENT OWNERS OF INTERESTS IN MINERALS AND TO REQUIRE THOSE HOLDING FUNDS FOR ABSENT OWNERS TO PETITION FOR CREATION OF SUCH TRUSTS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Creation of trust for absent mineral, leasehold, or royalty interest owners. (1) Any person who owns an interest in minerals underlying a tract of land may petition the district court of the county in which the tract or a portion of the tract is located to declare a trust in favor of a person or persons also owning or claiming an interest in the minerals underlying the tract if their place of residence and present whereabouts is unknown and cannot reasonably be ascertained.

(2) In requesting the appointment of a trustee, the petitioner must show that:

(a) a diligent but unsuccessful effort to locate the absent owner or claimant has been made; and

(b) appointment of a trustee will be in the best interest of all owners of interest in the minerals.

(3) After determining that the conditions of subsection (2) have been met, the court shall appoint the clerk of court as a trustee and shall authorize him to execute and deliver an oil, gas, or other mineral lease, an assignment of leasehold interest, a ratification, division order, or other related document or instrument on such terms and conditions as the court may approve.

Section 2. No further liability for petitioner. If a trust in favor of absent owners or claimants of an interest in minerals has been created and all bonuses, rental payments, royalties, and other income due to the absent owners are being or have been paid to the trustee, the person petitioning for creation of the trust is not liable for further claims by absent owners for bonuses, rental payments, royalties, and other income produced after the creation of the trust.

Section 3. Administration of the trust. (1) The administration of the trust shall comply with the appropriate provisions regulating trusts contained in Title 72.

(2) No trustee or attorney fees may be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other income shall be paid to the trustee until the trust is

SB 88

terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to it upon the order of the district court.

(4) A trust in favor of absent owners shall be in force until all absent owners of the mineral interest in question have successfully claimed their share of funds held in trust.

(5) The trustee shall invest funds under his management in the manner of a prudent man, as defined in 72-21-104. Fifty percent of the interest earned on each trust shall be credited to the general fund of the county in which the mineral interest is located to defray the costs of administration.

(6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title 70, chapter 9.

Section 4. Existing trust for absent mineral, leasehold, and royalty interest owners — transfer of trustees -- penalty. (1) Any bonuses, rental payments, royalties, and other income now held by any person or association for absent owners or claimants of an interest in minerals underlying a tract of land must be deposited with the clerk of the district court in which the tract is located within 6 months after [the effective date of this

act]. An accounting for the funds, any related documents, and any instrument creating a trust must be filed with the funds.

(2) No person may in the future personally hold for longer than 6 months any bonuses, rental payments, royalties, and other income for absent owners or claimants of an interest in minerals, but in such case must petition the district court for creation of a trust as provided in [section 1].

(3) If any person fails to comply with subsections (1) or (2), he is liable for all attorney fees and court costs and interest on the funds held in trust at twice the current average passbook account rate paid by financial institutions in that district.

Section 5. Filing of addresses. Upon the payment of a $5 fee, any person owning an interest in minerals underlying a tract of land may file with the secretary of state a notice of his address and the legal description of his interest.

-End-

FORTY-SIXTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY - SENATE

	Senate & House BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
1.	SB - 1	1/3/79	1/10/79	1/15/79			1/15/79			
2.	SB - 4	1/4/79	1/18/79	1/18/79			1/18/79			
3.	SB - 25	1/4/79	1/18/79	1/18/79			1/18/79			
4.	SB - 32	1/4/79	1/9/79	Tabled 2/12/79						
5.	SB - 54	1/4/79	1/18/79	2/12/79			2/12/79			
6.	SB - 65	1/4/79	1/22/79	2/16/79			2/16/79			
7.	SB - 33	1/5/79	1/16/79	1/12/79			1/12/79			
8.	Reconsidered SB - 41	1/5/79	1/16/79	1/11/79 1/16/79			1/11/79 1/16/79			
9.	SB - 51	1/5/79	1/10/79	1/12/79		1/12/79				
10.	SB - 56	1/5/79	1/10/79	1/12/79			1/12/79			
11.	SB - 63	1/5/79	1/16/79	1/11/79	1/11/79					
12.	SB - 64	1/5/79		transmitted 1/8/79						
13.	SB - 22		Tabled	Tabled						
14.	SB - 28	1/9/79	1/15/79	1/15/79			1/15/79			
15.	SB - 41	Reconsidered 1/9/79	1/11/79	1/11/79			1/11/79			
	SB - 58	1/11/79	1/16/79	1/16/79			1/16/79			

Use a separate sheet for each House Bills and Resolutions

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 16, 1979

The ninth meeting of the Senate Judiciary Committee was called to order by Chairman Everett R. Lensink on the above date in room 331 at 10:01 a. m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 88:

Senator Turnage gave an explanation of this bill, which is an act to provide for the creation and administration of trusts in favor of absent owners of interest in minerals and to require those holding funds for absent owners to petition for creation of such trusts. Senator Turnage went over the bill section by section.

There were some questions and some further explanations of the content of this bill. Senator Lensink asked if there were any further proponents and none came forward. Senator Healy requested that the term "absent owner" be defined. Senator Galt stated that in 1975 he had introduced a bill that was similar to this bill but went further and Senator Towe commented that this was an offshoot of that bill and stated that the bill was passed by the senate but was killed in the house.

Senator Anderson questioned if when the property accedes to the state, does it go into the general fund. Senator Towe said that it eventually ends up in the general fund.

Senator Towe made a motion to amend the bill on page 4, line 12 by striking the word "the" following the word "on" and inserting in lieu thereof the word "such" and to strike the words "held in trust". The motion carried unanimously.

Senator Anderson questioned if there was a considerable amount of money presently being held for oil companies. Don Allen, representing the Montana Petroleum Association, stated that this was not really so. Don Allen did question if in section 1, the wording would limit the benefit only to the person with mineral interests. He felt that maybe it should be any interested person. Both Senators Turnage and Towe felt satisfied with the language that is now in the bill.

There were no further comments or questions on this bill.

DISPOSITION OF SENATE BILL 88:

Senator Turnage moved that this bill do pass as amended. The motion carried unanimously.

There being no further business, the meeting adjourned at 10:23 a.m.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
Judiciary Committee

STANDING COMMITTEE REPORT

January 16, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 88

Respectfully report as follows: That Senate Bill No. 88

introduced bill, be amended as follows:

1. Page 4, line 12.
Following: "on"
Strike: "the"
Insert: "such"

2. Page 4, line 12.
Strike: "held in trust"

And, as so amended,

DO PASS

Everett R. Lensink Chairman.

STATE PUB. CO.
Helena, Mont.

Date Jan 15, 1979

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Farnsworth, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Gilt, Jack E. (R)	✓		
Powe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

SENATE

SENATE [illegible] COMMITTEE

BILL SJ VISITORS' REGISTER DATE 1/16/89

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPO
Lloyd Schye	Hecla Co	SJR6		
Howard Buckwell	Montana Mining Assn	SB 88		
Dorothy Thompson	Montana Mining Assn	SB 88		
Thomas F. Monahan	Mont. R.R. Assn	SB 88		
Pat Stuart	Mt. Coal Council	SB 88		
Dick Gilbert	Self	SB88		
Mic Hickman	Mont Wildlife Fed	SJR3		
Dennis Burr	Dept of Revenue			
Mary Craig	DOR			

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

Judiciary COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 88	for creation & administration of trusts - interests in minerals etc.	1/25	Turnage	Tuesday 30th	As amended be concurred in	3/16
HJR 15	to congress of US to call convention to propose an amendment to protect lives of unborn	1/25	O'Connell	Tuesday 30th	Pass	1/31
HB 413	Compensation for loss of salary for injured officers etc.	1/26	Fabrega	Tuesday 30th	Pass	1/31
HB 422	define criminal possession of precursors to certain dangerous drugs	1/26	Lory	Weds 31st	pass rereferred 2/9	2/6
SB 137	permit SRS access to necess. birth records - adoption agencies	1/26	S. Brown	Weds. 31st	concurred in	3/5
HB 424	revise television district law - creation, alteration or dissolution etc.	1/27	Yardley	Weds 31st	pass	2/2

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
January 30, 1979

The regular meeting of the Judiciary Committee was called to order by Chairma John Scully at 8:00 a.m. in room 436 of the Capitol Building on Tues January 30. All members were present. Bills scheduled for hearing were House Bills 396, 413 and Senate Bill 88. House Joint Resolution 15 will be held in the Highway Auditorium because of the expected large number of witnesses, at 9:00 a.m.

HOUSE BILL NO. 413: Representative Fabrega. This bill was introduced at the request of the League of Cities and Towns. This bill would put compensation for loss of salary for injured officers under Workers compensation, and the city would be mandated to pay the difference between the officers full salary and the amount paid by workers compensation. This would be until his disability has ceased or for a period not to exceed 1 year, whichever comes first. I talked to the gentlemen who represent the police association. They are in favor of the bill.

JIM TURCOTTE, PERS: I support the bill but I would like to comment. By reducing the amount of salary the city is paying and that would reduce the amount the county will pay and that would reduce his retirement benefits. He discussed the average salary and the highest 36 month average. The only problem is the person disabled on the job and then becomes permanently disabled. The city would continue to make the 100% contribution and the policeman would have to make his full contribution.

There was some discussion and the hearing closed on House Bill No. 413.

HOUSE BILL NO. 396: Representative Keedy. This bill would eliminate the designation of nondangerous offender for the purposes of eligibility for parole. The board could release on parole by order any person confined to prison except persons under sentence of death and when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or the the community. He went on to explain the terms of the sentences and the parole procedure.

LARRY ZANTO: Department of Institutions. I have some hesitation about coming before the legislature on bills on sentencing. There should be a little bit of toughening up in the area. The sections that should be repealed were discussed.

REPRESENTATIVE KEEDY: It is not true that this bill will take out discretion from the judges. The fact of the matter is the judges have a wide range of discretion. So it is not at all true that HB 396 removes discretion from the judges. At the same time it is certainly a tougher sentencing bill. It is their responsibility. The offender can be back among us in a deceptively short time. I think the judge has the authority and responsibility to sentence these people. This was in answer to a comment that the bill did take authority away from the judge. Representative Keedy went on

SENATE BILL NO. 88: Senator Turnage. This bill would provide for the creation and administration of trusts in favor of absent unlocatable owners of interests in minerals. It would require those holding funds for unlocatable owners to petition for creation of such trusts. It concerns severed mineral rights. The The problem really got started with uniting severed miners rights with the owners rights. What do you really do when you ahve a fractured mineral right and there are other people that want to lease the mineral rights, so this bill is an attempt whereby a trust is created and a trustee would then have lawful authority. It was amended in the Senate. Section 4 is controversial with the oil people. They are opposed to that. It provides that in the event that there are monies held there are hold accounts. They have a period of 6 months to come forward with the money. The Attorney General has some question about the escheat portion.

SENATOR TOWE: This is a good bill and I would commend it to you. There are a number of oil companies that are not locating all of the heirs and are holding the money in the hope that the people don't show up. Our law definitely relates to what can be done with the money.

LES LOBEL: Montana, Dakota Utilities. I have a concern with this bill and the unclaimed property act. On page 4, line 10 that provision seems to cover the situation with a lease property. I would suggest an amendment, so that the company does not have the expense of setting up the trust. There was some discussion about this.

DENNIS DUNPHEY: Assistant Attorney General. I assist the Department of Revenue in the unclaimed property act. I am in favor of this bill. There is a 7 year presumption under the unclaimed property act. He explained the law.

Representative Scully asked if you would not set up a formed trust that you could snap together with very little effort. Some discussion followed about this.

SENATOR TOWE: We could amend the amendment so that the amount is less than $200. Some discussion followed and the attorney generals office presented amendments for the committee to study.

There was no further discussion and no questions and the committee recessed for a short time to go to the Highway Auditorium to hear House Joint Resolution 15.

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
EXECUTIVE SESSION
March 5, 1979

Following the regular meeting the committe went into executive session in room 436 of the Capitol Building at 10:00 a.m. Monday, March 5. All members were present except Representatives Pavlovich, Seifert, Keedy, Uhde, and Chairman Scully. Representative Teague chaired the meeting until Representative Scully came back from carrying a bill in the Senate. Representative Uhde came in later also.

SENATE BILL NO. 88: Representative Anderson moved "be concurre in". After lengthy discussion it was deci to pass for the day, in order to get more information.

SENATE BILL NO. 104: Representative Holmes moved "be concurred in". The motion carried with the vote unanimous. Representative Rosenthal will carry the bill on the floc

SENATE BILL NO. 120: Representative Lory moved "be concurred in The motion carried with the vote unanimous Representative Kemmis moved that it be placed on the consent calenda The motion carried with the vote unanimous.

SENATE BILL NO.137: Representative Roth moved "be concurred in The motion carried with the vote unanimous Representative Roth will carry on the floor.

SENATE BILL NO. 149: Representative Keyser moved "be concurred in". After much discussion whether this was covered in the bill revising election laws, Representative Keyse withdrew his motion. It was decided to pass for the day and Representative Eudaily will check to see if it is covered in the other bi

SENATE BILL NO. 152: Representative Eudaily moved to amend line 24, page 2 by reinserting "justify, or". The motion carried with the vote unanimous.

Representative Holmes moved to amend line 6 of page 4, following line 6, insert: "and must be made within 10 days of the referee's recommendation". The motion carried with the vote unanimous.

Representative Lory moved to strike, "refe and insert, "departments" on line 11, page The motion carried with the vote unanimous.

Representative Lory moved to amend on page line 22 by striking "referee's written" and inserting, "departments". The motion carried with the vote unan

JUDICIARY COMMITTEE
EXECUTIVE SESSION
March 8, 1979

Following the regular meeting the committee went into executive session to take action on pending bills. The meeting was called to order b Chairman Scully at 9:00 a.m. in room 436 of the Capitol Building on Thursday. All members were present although some did have to leave for other meetings, leaving votes for pending action.

SENATE BILL NO. 322: Representative Keyser moved "be concurred in". The motion carried with the vote unanimous. Representative Daily will carry or else check to see who will.

SENATE BILL NO. 432: Representative Kemmis moved "be concurred in". The motion carried with the Representative Day voting "no". Representative Scully wil carry on the floor.

SENATE BILL NO. 288: Representative Lory moved "be concurre in". The motion carried with the vote unanimous. Representative Scully will carry on the floor.

SENATE BILL NO. 367: Representative Lory moved "be concurre in". The motion carried with the vote unanimous. Representative Lory will carry on the floor.

SENATE BILL NO. 488: Representative Kemmis moved to amend on page 2, line 23 and strike subsecti (1)(g) in its entirety. The motion carried with the vote unanimous. Representative Day moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Day will carry.

SENATE BILL NO. 88: Representative Scully appointed Representative Keedy to check with Senator Turnage and Mike Meloy about possible amendments. He will report ba

SENATE BILL NO. 217: Representative Lory moved "not concurr in". A straw vote showed that the mot would fail, consequently Representative Keedy presented his amendmen to make it a workable bill. After some discussion about the amendme it was agreed to postpone until Representative Keedy could be there because he had to attend a Senate hearing. Before he left he did sa that the main changes were on page 2, and new language on subsection Representative Lory asked about where the action should occur. Ther was some discussion.

The meeting adjourned at 9:55 a.m.

John P. Scully, Chairman

JPS:mec

JUDICIARY COMMITTEE
EXECUTIVE SESSION
March 16, 1979

The Judiciary Committee was called to order by Chairman Scully at 8:00 a.m in room 436 of the Capitol Buildin. All members were present except Representatives Conroy and Seifert.

SENATE BILL NO. 217 Representative Keedy presented prepared amendments to the committee. He explained the amendments and the drafting of them. It would retain the exclusionary rule. The exclusionary rule, which requires the exclusion of otherwise admissible evidence, has consistently permitted the guilty to escape prosecution and punishment because the police have committed errors which in many cases have been technical in nature and in most cases have been made in good faith. Actual police lawlessness has seldom been deterred by the rule in cases where prosecutions have resulted since the exclusion of the evidence at trial carries no personal sanction against the police officer involved. Such police lawlessness has seldom been deterred by the rule where the police have had goals other than the prosecution of criminals since such activity is subject to virtually no judicial scrutiny and the rule provides no remedy for the innocent victims of such lawlessness. Application of the rule often deflects the truthfinding process and often frees the guilty. The disparity in cases between the error committed by the police officer and the windfall afforded a guilty defendant by application of the rule is contrary to the idea of proportionality that is essential to the concept of justice. Although the rule is thought to deter unlawful police activity because of the respect for the fourth amendment, it may well have the opposite effect of generating disrespect for the law and administration of justice. He went on to explain the bill as his amendments would affect it and what they would do.

Representative Scully questioned subsection 4, concerning civil liability and proof by a preponderance of evidence that there was a violation of the rights of a person protected by the fourth amendment. Some discussion followed.

Then followed discussion about the warrant and the civil damages, and further discussion about civil liability. Representative Kemmis asked about the provision of violation. Would they be weighed one against the other.

Larry Weinberg, staff attorney, explained the new section three as used in this bill. He explained the exclusive remedy and the laws of Montana relating to search and seizure.

After much further discussion Representative Keedy moved the amendments. He stated that on page 5, it would be necessary to strike the new section in the big sheet presented to the committee and adopt the new section 11 of the

small sheet. On page 7, line 6, insert the word "seized". On page 7, subsection (2) strike "criteria of" and insert "criteria in".

Representative Holmes moved to amend the new section 11 on page 1, by striking "grossly". The amendment failed with only Representative Holmes voting "yes".

The question was called on the amendments of Representative Keedy. The motion to adopt the amendments carried with Representative Pavlovich voting "no".

Representative Keedy moved "be concurred in as amended". The motion carried with a roll call vote of 9 yes, 8 no and 2 absent. Mr. Keedy will carry.

SENATE BILL NO. 106: Representative Lory moved to amend on page 2, line 8 by striking "15-18-501 through 15-18-503" and inserting "2-18-501 through 2-18-503". The motion carried with the vote unanimous. Representative Keedy moved to amend page 1, line 14, by striking "$19,500 and inserting $22,500". The motion carried by unanimous vote after lengthy discussion.

Representative Holmes moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Holmes will carry.

SENATE BILL NO. 88: Representative Kemmis moved to amend page 3, line 7, by striking "has" and inserting "have". Representative Keedy moved to amend page 4, line 5, by striking "in the future", and on page 4, line 19, by striking "hereof". The motion to amend carried in both cases by unanimous vote.

Representative Roth moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Roth will carry.

SENATE BILL NO. 54: Representative Kemmis moved "be concurred in". The motion carried with the vote unanimous. Representative Kemmis will carry.

SENATE BILL NO. 243: Representative Kemmis moved "be concurred in". The motion carried with the vote unanimous. This is a companion bill to 54. Representative Kemmis will carry.

SENATE BILL NO. 283: Representative Keedy moved to amend, page 7 by striking section 1 and reinserting

March 16, 1979

HOUSE OF REPRESENTATIVES

Judiciary Committee amendments to SENATE BILL NO. 88, third reading copy, as follows:

1. Page 3, line 7.
Following: "~~have~~"
Strike: "HAS"
Insert: "have"

2. Page 4, line 5.
Strike: "in the future"

3. Page 4, line 19.
Strike: "HEREOF"

AND AS AMENDED, BE CONCURRED IN.

SENATE BILL NO. 88

INTRODUCED BY TURNAGE, TOWE

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE CREATION AND ADMINISTRATION OF TRUSTS IN FAVOR OF ~~ABSENT~~ UNLOCATABLE OWNERS OF INTERESTS IN MINERALS AND TO REQUIRE THOSE HOLDING FUNDS FOR ~~ABSENT~~ UNLOCATABLE OWNERS TO PETITION FOR CREATION OF SUCH TRUSTS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Creation of trust for absent UNLOCATABLE mineral, leasehold, or royalty interest owners. (1) Any person who owns an interest in minerals underlying a tract of land may petition the district court of the county in which the tract or a portion of the tract is located to declare a trust in favor of a person or persons also owning or claiming an interest in the minerals underlying the tract if their place of residence and present whereabouts is unknown and cannot reasonably be ascertained.

(2) In requesting the appointment of a trustee, the petitioner must show that:

(a) a diligent but unsuccessful effort to locate the absent owner or claimant has been made; and

(b) appointment of a trustee will be in the best interest of all owners of interest in the minerals.

(3) After determining that the conditions of subsection (2) have been met, the court shall appoint the clerk of court as a trustee and shall authorize him to execute and deliver an oil, gas, or other mineral lease, an ~~assignment of leasehold interest~~, a ratification, division order, or other related document or instrument on such terms and conditions as the court may approve.

Section 2. No further liability for petitioner. If a trust in favor of absent UNLOCATABLE owners or claimants of an interest in minerals has been created and all bonuses, rental payments, royalties, and other income due to the absent owners are being or have been paid to the trustee, the person petitioning for creation of the trust is not liable for further claims by absent UNLOCATABLE owners for bonuses, rental payments, royalties, and other income produced after the creation of the trust.

Section 3. Administration of the trust. (1) The administration of the trust shall comply with the appropriate provisions regulating trusts contained in Title 72.

(2) No trustee or attorney fees may be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other income shall be paid to the trustee until the trust is

REFERENCE BILL

terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to it upon the order of the district court.

(4) A trust in favor of absent UNLOCATABLE owners shall be in force until ~~all absent~~ THE UNLOCATABLE owners of the mineral interest in question have HAS HAVE successfully claimed ~~their~~ THE share of funds held in trust AND FILED THE NOTICE PROVIDED IN [SECTION 2].

(5) The trustee shall invest funds under his management in the manner of a prudent man, as defined in 72-21-104. Fifty percent of the interest earned on each trust shall be credited to the general fund of the county in which the mineral interest is located to defray the costs of administration.

(6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title 70, chapter 9.

Section 4. Existing trust for absent UNLOCATABLE mineral, leasehold, and royalty interest owners -- transfer of trustees -- penalty. (1) Any bonuses, rental payments, royalties, and other income now held by any person or association for absent UNLOCATABLE owners or claimants of an interest in minerals underlying a tract of land must be deposited with the clerk of the district court in which the

tract is located within 6 months after [the effective date of this act]. An accounting for the funds, any related documents, and any instrument creating a trust must be filed with the funds.

(2) No person may ~~in the future~~ personally hold for longer than 6 months any bonuses, rental payments, royalties, and other income for absent UNLOCATABLE owners or claimants of an interest in minerals, but in such case must petition the district court for creation of a trust as provided in [section 1].

(3) If any person fails to comply with subsections (1) or (2), he is liable for all attorney fees and court costs and interest on ~~the~~ SUCH funds ~~held in trust~~ at twice the current average passbook account rate paid by financial institutions in that district.

Section 5. Filing of addresses. Upon the payment of a $5 fee, any person ~~owning~~ CLAIMING an interest in minerals underlying a tract of land WHICH IS THE SUBJECT OF A TRUST PROCEEDING UNDER [SECTION 1] HEREOF may file with the secretary of state CLERK AND RECORDER OF EACH COUNTY WHEREIN THE MINERAL INTERESTS LIE a notice of his address and the legal description of his interest AND THEREBY ESTABLISH A REBUTTABLE PRESUMPTION THAT SUCH PERSON OWNS THE INTEREST CLAIMED.

SECTION 6. THERE IS A NEW MCA SECTION THAT READS:

Definition. The word "person", as used herein shall mean any individual, corporation, partnership, joint venture, trust or other entity capable of owning real property in Montana.

-End-